302

SUPREME COURT OF THE UNITED STATES.

No. 58.

JOHN B. GORMAN, ET AL., PLAINTIFFS IN ERROR,

vs.

PETER LENOX'S EX'RS, DEF'TS IN ERROR.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON.

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Langtree & O'Sullivan, Print.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the Circuit Court of the United States for the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Lewis H. Machen, John McLelland, Theodore Wheeler and Lucinda, his wife, executors of the last will and testament of Peter Lenox, deceased, plaintiffs, and John B. Gorman, Leonard Storm and William G. Deale, defendants, a manifest error hath happened, to the great damage of the said John B. Gorman, Leonard Storm and William G. Deale, as by their complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you have the same at Washington, on the first Monday of August next, in said Supreme Court, to be then and there held; and that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

(SEAL.) Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court.

W. BRENT,
Clk Circ't Ct. Dist. of Col., City Washington.

Issued this 21st day of January, 1839.

W. BRENT, *Clerk.*

Filed 21st January, 1839.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Lewis H. Machen, John McLelland, Theodore Wheeler and Lucinda, his wife, executors of the last will and testament of Peter Lenox, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the first Monday of August next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein John B. Gorman, Leonard Storm

and William G. Deale are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said John B. Gorman, Leonard Storm and William G. Deale, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. William Cranch, chief judge of the circuit court of the District of Columbia, this 21st day of January, 1839.

W. CRANCH.

Service acknowledged. BRENT & BRENT.

Know all men by these presents, that we, John B. Gorman, Leonard Storm, Benjamin Burns, and William Holmead, are held and firmly bound unto Lewis H. Machen, John McClelland, Theodore Wheeler and Lucinda, his wife, in the full and just sum of two thousand dollars, current money, to be paid to the said Lewis H. Machen, John McClelland, Theodore Wheeler and Lucinda, his wife, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this twenty-first day of January, in the year of our Lord one thousand eight hundred and thirty-nine.

Whereas lately, at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said Lewis H. Machen, John McClelland, Theodore Wheeler, and Lucinda, his wife, the executors of the last will and testament of Peter Lenox, deceased, were plaintiffs, and the said John B. Gorman, Leonard Storm, and one William G. Deale, were defendants, judgment was rendered against the said defendants, and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said executors, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the Monday of next:

Now the condition of the above obligation is such, that if the said John B. Gorman, Leonard Storm and William G. Deale shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be null and void; otherwise to be and remain in full force and virtue in law.

J. B. GORMAN, (SEAL.)
LEONARD STORM, (SEAL.)
WM. HOLMEAD, (SEAL.)
BENJAMIN BURNS. (SEAL.)

Signed, sealed and delivered in the presence of
GEORGE V. HEBB.

Approved. W. CRANCH.

Copy—Test: W. BRENT, *Clk.*

Style of Court.

DISTRICT OF COLUMBIA, *sc:*

At a circuit court of the District of Columbia, begun and held for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-sixth day of the same month, in the year of our Lord one thousand eight hundred and thirty-eight, and of the Independence of the United States the sixty-third.

Present: The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER, THRUSTON, & JAMES S. MORSELL, *Ass't Judges.*
ALEXANDER HUNTER, Esquire, *Marshal.*
WILLIAM BRENT, *Clerk.*

In the records of the proceedings of the said court, among others, are the following, to wit:

Parties.

LEWIS H. MACHEN, JOHN MCCLELLAND, et al., Ex'rs of Peter Lenox, dec'd,
against
JOHN B. GORMAN, LEONARD STORM, and WILLIAM G. DEALE.

Be it remembered, that heretofore, to wit, on the fifth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, the said plaintiffs, by Brent & Brent, Esquires, their attorney, prosecuted and sued forth, out of the circuit court here, the United States writ of capias ad respondendum, directed to the marshal of the District of Columbia, in the words and of the tenor following, to wit:

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia, greeting:

We command you that you take the bodies of John B. Gorman, Leonard Storm, and William G. Deale, late of Washington county, if they shall be found within the county of Washington, in your said district, and them safely keep, so that you have their bodies before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of November next, to answer unto Lewis H. Machen, John McClel-

land, Theodore Wheeler, and Lucinda, his wife, executors of Peter Lenox, dec'd, of a plea that they render unto them the sum of three thousand four hundred dollars which to them they owe, and from them unjustly detain, and so forth.

Hereof fail not, at your peril, and have you then and there this writ.

Witness W. Cranch, Esquire, chief judge of our said court, at the city of Washington, the 3d day of July, anno Domini, one thousand eight hundred and thirty-seven.

Issued the 5th day of July, 1837.

W. BRENT, *Clerk.*

B. & B.

And the aforesaid plaintiff, by his attorney aforesaid, on the day of prosecuting and sueing forth of the aforesaid writ, declared against the said defendants in the plea aforesaid, in form following, to wit:

Nar.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

John B. Gorman, Leonard Storm, and William G. Deale, late of Washington county, yeomen, were summoned to answer unto Lewis H. Machen, John McClelland, Theodore Wheeler, and Lucinda, his wife, which said Lewis H. Machen, John McClelland, and Lucinda, are executors of Peter Lenox, deceased, of a plea that they render unto them the sum of three thousand four hundred dollars which to them they owe, and from them unjustly detain.

And whereupon the said plaintiffs, by Brent & Brent, their attorneys, complain that, whereas the said defendants, on the seventeenth day of November, in the year eighteen hundred and thirty-two, at the county aforesaid, by their certain writing obligatory, sealed with their seals, and to the court now here shown, whose date is the day and year aforesaid, acknowledged themselves to be held and firmly bound to the said Peter Lenox in the just and full sum of three thousand four hundred dollars, to be paid to the said Peter Lenox, his executors, or administrators, whenever afterwards they, the said defendants, should be thereto required: which said writing obligatory was made and is subject to a certain condition thereunder written, whereby after reciting to the effect following, to wit: that whereas the said John B. Gorman was about to issue out of the circuit court of the District of Columbia for Washington county, a writ of replevin, to be directed to the marshal of the District of Columbia, commanding him to replevy the following goods and chattels, that is to say: one carpet in mess-room, one hair sofa, one mantel glass, one mahogany sideboard, one dozen rush-bottomed chairs, two marble stands, one set of dining tables, one pair andirons, shovel and tongs and fender-rug, two spit-boxes and brush, seven pictures with gilt frames, three winter curtains and cornices, one carpet in

sitting room, two card tables, one pier glass, two window curtains and cornices, one dozen rush-bottomed chairs, 6 prints with gilt frames, 1 fender, shovel and tongs, 2 spit-boxes, brush and hearth-rug, 1 carpet, 1 pair andirons, bed, bedstead and curtains, wash-stand, basin and ewers, 1 looking-glass, table and two chairs, bedstead, bed-curtains and bolsters, 1 bureau, carpet, wash-stand, basin and ewer, 1 dressing-table and glass, one carpet, two small tables, one candle-stand and two chairs, one mahogany bedstead, hair matrass, bed bolster, two pillows and curtains, two sheets, 3 blankets and coverlid, 1 bureau, 2 dressing-glasses, wash-stand, 2 bowls, 2 pitchers, carpet and two chairs, four chairs, carpet, dressing-table and irons, 13 beds, bedsteads, bolsters and pillows, 39 blankets, 26 sheets, 13 quilts and 10 curtains for beds, 9 bureaus, 9 carpets for bed-rooms, 1 mantel glass, 2 mahogany tables, mahogany sideboard, andirons, shovel, tongs, fender and carpet, which the said Peter Lenox had taken and unjustly detained, as it was said. The condition of said obligation was such, that if the said John B. Gorman should well and truly prosecute the said writ of replevin with effect, and also should and would return the goods and chattels aforesaid, if the same be adjudged, and in all things stand to and abide by, perform and fulfil, the judgment of the court in the premises; then the above obligation to be void, else to be and remain in full force and virtue in law.

The plaintiffs aver, that after the making the said writing obligatory, and before the commencement of this action, heretofore, to wit, on the nineteenth day of November, in the year A. D. 1832, at the county aforesaid, the said John B. Gorman, did prosecute and sue forth out of said circuit court a certain writ of replevin, which said writ was then and there directed to the marshal of the District of Columbia, by virtue of which said writ the said marshal to whom it was directed, to wit, Henry Ashton, heretofore, to wit, on the nineteenth day of November, in the year A. D. 1832, replevied the said goods and chattels from the said Peter Lenox, and delivered the same to the said John B. Gorman, according to the mandate of said writ. And afterwards, to wit, on the fourth Monday of November, eighteen hundred and thirty-two, and the day of the return of the said writ, the said Henry Ashton made return thereof and of his doings thereon to the said court; and the said John B. Gorman, by his attorney, then and there appeared in said court; and the said plaintiffs, after the death of Peter Lenox, as his executors, then and there also appeared, by Joseph H. Bradley, their attorney, in said court; the plaintiffs aver, that it was in such manner proceeded in the said court upon said writ, and in said action of replevin, that afterwards, to wit, on the 8th day of June, in the year A. D. 1837, it was considered and adjudged by said court, that the said John B. Gorman take nothing by his said writ, and that he shall, be in mercy, &c., and that the plaintiffs should go thereof, without day, &c., and that the plaintiffs should recover one cent damages, as well as the sum of , for their cost and charges by them about their

defence in that behalf sustained, to the said plaintiffs with their consent, by the said court then and there adjudged, and that they might have execution thereof, according to the form of the statute in that case made and provided, as by the record and proceedings thereof still remaining in said court here, to wit, as more fully appears; of which judgment the said John B. Gorman had notice, to wit, on the 9th day of June, in the year of our Lord, 1837, at the county aforesaid; the said plaintiffs aver, that Gorman did not prosecute with effect the said writ of replevin against the said Peter Lenox or his executors, for the taking of the goods and chattels replevied as aforesaid, and in the condition of said writing obligatory mentioned, and has not returned or redelivered to the plaintiffs the said goods and chattels, and has not paid to the plaintiffs their charges and costs aforesaid, to them in form aforesaid adjudged, according to the form and effect of the said condition, but has therein wholly failed and made default, whereby the said writing obligatory became forfeited, by means of which premises, the plaintiffs have sustained damages to a large amount, to wit, three thousand dollars; thereby an action hath accrued to the plaintiffs, to have and demand of the said defendants the sum of three thousand dollars above demanded; yet the defendants, although often requested, to wit, on the first day of June, 1837, at the county aforesaid, and often afterwards at the county aforesaid, have not paid to the plaintiffs the said sum of money, or any part thereof, but to pay the same have ever wholly refused, and still do refuse, to the damage of the plaintiffs. And therefore they bring suit, &c.

BRENT & BRENT, *for Plaintiff.*

JOHN DOE,
RICHARD ROE, } Pledges.

November Term, 1837.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-seven, and the day of the return of the aforegoing writ, comes into court here, the said plaintiffs by their attorney aforesaid; and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here thus endorsed, to wit:

Marshal's Return, and Defendants' Appearance.

"Cepi all.

ALEX. HUNTER, *Marshal.*"

Rule—Plea, and Imparlance to March Term, 1838.

And the said defendants being called, appear in court here, by James Hoban, Esq., their attorney; and thereupon, on motion of the

said plaintiffs by their attorney aforesaid, it is ruled by the court here, that the said defendants answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be entered against them in default thereof; and the said defendants, by their attorney aforesaid, defend the force and injury, when, &c., and pray leave of the court here to imparle until the fourth Monday of March, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid. And to them it is granted; and the same day is given to the aforesaid plaintiffs also.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-eight, to which said day the said defendants had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, comes again into the circuit court here, as well the said plaintiffs by their attorney aforesaid, as the said defendants by their attorney aforesaid.

Plea of General Performance.

And the said defendants, by their attorney aforesaid, as before, defend the force and injury, when, &c., and say, that the said plaintiffs the action aforesaid against them to have or maintain ought not, because they say that the said John B. Gorman, in the condition of the said writing obligatory mentioned, from the time of the making the said writing obligatory hitherto, hath well and truly observed, performed, fulfilled, and kept, all and singular the matters and things in the condition of the said writing obligatory mentioned and contained, which he, according to the force, form and effect of the same condition, ought to have observed, performed, fulfilled and kept, to wit, at the county of Washington aforesaid; and this they, the said defendants, are ready to verify, &c. Wherefore they pray judgment, if the said plaintiffs ought to have or maintain the action aforesaid thereof against them, the said defendants, &c.

Demurrer to the above Plea.

And the said plaintiffs say that they, by any thing by the said defendants above in pleading alleged, ought not to be precluded from their action thereof against them, the said defendants, because they say that the plea aforesaid, by the said defendants in manner and form aforesaid above pleaded, and the matters in the same contained, are not sufficient in law to preclude them, the said plaintiffs, from their action aforesaid thereof against them, the said defendants, had; to which said plea, in manner and form aforesaid above pleaded, they, the said plaintiffs, have no necessity, nor are, by the law of the land, obliged in any manner to answer; and this they are ready to verify. Wherefore, for want of a sufficient plea in this behalf, the same plaintiffs pray judgment, and their debt aforesaid, together with their damages, by reason of the detention of that debt to be adjudged to them, &c.

Thereupon the said defendants, by their attorney aforesaid, filed in court here the following plea of set-off, to wit:

Defendants' Plea of Set-off.

And the said defendants, by their attorney aforesaid, come and defend the force and injury, when, &c., and say, that the said *the said* plaintiffs their action aforesaid against them, as to the said breach of covenant above assigned, to have and maintain ought not, because they say that, at the time of the alleged breaches of the covenants in the declaration mentioned, to wit, on the ninth day of June, in the year 1837, Peter Lenox, late of Washington county aforesaid, who was the testator of the said executors, plaintiffs in this action, was indebted unto the said Gorman in the sum of twelve hundred and thirty-eight dollars, ninety-six cents, (vide page 42,) current money of the United States, for so much money lent and advanced to the said Lenox by the said Gorman, at the special instance and request of said Lenox: and also in another sum of twelve hundred and thirty-eight dollars, ninety-six cents, current money, for goods, wares and merchandize, sold and delivered to said Lenox, by said Gorman; and in another sum of twelve hundred and thirty-eight dollars, ninety-six cents, current money, by the said Lenox to the said Gorman owing, for matters and things properly chargeable in an account, a particular account whereof is herewith shewn; which said sums of money yet remain due and unpaid from said Lenox to said Gorman: out of which said sum of money, the said defendants are ready and willing, and hereby set off and allow to said plaintiffs so much of the damages sustained by the said plaintiffs, by occasion of the said supposed breaches in the said declaration mentioned amount to, according to the act of assembly in such case made and provided; and this they are ready to verify.

Whereupon the said plaintiffs, by their attorney aforesaid, file in court here the following replication to the above plea of set-off, to wit:

Replication to the above Plea of Set-off—Non-Assumpsit.

And the said plaintiffs say that they, by reason of any thing by the said defendants in this plea of set-off above alleged, ought not to be barred from having and maintaining their action aforesaid against said defendants, because they say that the said Peter Lenox (the deceased) in his life-time did not undertake or promise, in manner and form as the said defendants have above pleaded; and of this they put themselves upon the country, &c.

Plea Liens.

And the plaintiffs, by leave of the court here first had and obtained, further say that they, by reason of any thing by the said

defendants on their plea of set-off above alleged, ought not to be barred from having and maintaining their action aforesaid against said defendants, because they say that the several supposed causes of action in the said plea of set-off mentioned did not, nor did any or either of them, accrue to the said John B. Gorman within three years next before the commencement of this suit, in manner and form as the said defendants have above pleaded; and this the plaintiffs are ready to verify. Wherefore they pray judgment, &c.

And the plaintiffs, by leave of the court here first had and obtained, further say, that they, by reason of any thing by said defendants in their plea of set-off above alleged, ought not to be barred from having and maintaining their action aforesaid against said defendants, because they say that the several supposed causes of action in the said plea of set-off mentioned did not, nor did either of them, accrue to the said John B. Gorman within three years next before the time of filing the said plea of set-off, in manner and form as alleged by said defendants; and this the plaintiffs are ready to verify. Wherefore they pray judgment, &c.

BRENT & BRENT, *for Plaintiffs.*

Issue joined to Non-assumpsit on Set-off.

And the said John B. Gorman, Leonard Storm and William G. Deale, as to the first plea of the said Lewis H. Machen, John McClelland, Theodore Wheeler and Lucinda, his wife, executors of Peter Lenox aforesaid, above pleaded in like manner, &c.

Replication to the above Pleas of Limitations, &c.

And the said John B. Gorman, Leonard Storm, and William G. Deale say, that they, by any thing by the said Lewis H. Machen and others, executors as aforesaid, in their second and third pleas above alleged, ought not to be precluded from having their action aforesaid against the said Lewis H. Machen and others, executors as aforesaid, because they say, that the said Peter Lenox, in his life time, within three years next before the commencement of this suit and the filing of the said plea of sett-off, did assume upon himself, in manner and form as the said John B. Gorman, Leonard Storm, and William G. Deale above against them the said Lewis H. Machen and others, executors as aforesaid, in their said plea alleges; and this they pray may be enquired of by the country, &c.

Issue joined—Venire facias to November Term, 1838.

And the said Lewis H. Machen, John McClelland, Theodore Wheeler and Lucinda, his wife, executors as aforesaid, in like manner, &c.; therefore, let a jury thereon appear before the court here, on the fourth Monday of November next, by whom, &c., and who

neither, &c., to recognize, &c., because as well, &c. And the same day is given to the said parties, then and there, and so forth.

Appearance of Parties.

And now, at this day, to wit, the said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-eight, come again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid. Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twelve persons, from the panel of petit jurors returned to the court here, by the marshal of the District aforesaid, be drawn by ballot; and thereupon, the twelve persons, being so drawn and called, came, to wit:

Jury.

1. Richard Butt,
2. Jos. Harbaugh,
3. George Crandle,
4. Leonard Harbaugh,
5. John Queen,
6. Anthony Smith,
7. John B. Ferguson,
8. Charles Butler,
9. James Owens,
10. John Mount,
11. Benjamin K. Morsell,
12. Benjamin Burnes.

Empanelled—Verdict.

Who, being empanelled and sworn to say the truth in the premises, upon their oath do say, that they find a verdict for the plaintiffs on the issue joined; and further, find the sum of one thousand and eighty-eight dollars and twenty-five cents is really and justly due on the bond.

Motion in arrest of Judgment.

Whereupon the said defendants, by their attorney aforesaid, moved the court here, in arrest of judgment upon the verdict aforesaid, so as aforesaid rendered by the jury and filed in court here, the following reasons, to wit:

Reasons.

1. Because the plaintiffs are not entitled to a judgment on the verdict for the amount thereof—that amount being the amount of rent in arrear found by the former jury in the former record—and there being no breach in the declaration stating that as the plaintiffs' damage.

2. Because the plaintiffs are not entitled to a judgment on the demurrer for any thing but the damages and costs stated in the

declaration as the breach of the condition of the bond for which this action is brought.

3. Because the plaintiffs, under the breaches set out in their declaration, are not entitled to the amount of rent in arrear, as found in the record given in evidence—but only to the damages and costs stated in the former record—neither on the verdict now rendered, nor on the demurrer.

4. Because the court cannot ascertain the damages on the demurrer, but the same should have been done by a jury.

HOBAN & KEY, *for Defts.*

Motion Overruled, and Judgment on Demurrer for Plaintiffs.

Whereupon, the above reasons being read and considered by the court here, it is considered by the court here, that they are insufficient in law to arrest the judgment of the court in the premises; and are thereupon overruled by the court.

Whereupon, all and singular the premises being seen, heard, and by the court here fully understood, and mature deliberation being thereupon had, it appears to the court here, that the said plea of performance of the said defendants above pleaded, and the matters therein contained, are not sufficient in law to preclude the said plaintiffs from having and maintaining their said action against the said defendants, in manner and form as the said plaintiffs have above alleged. Wherefore the said plaintiffs ought to recover against the said defendants their damages on occasion of the premises. Thereupon it is considered by the court here, that the said plaintiffs recover against the said defendants the sum of three thousand four hundred dollars current money, the penalty aforesaid, as the sum of three thousand dollars damages; the said debt and damages to be released on the payment of the sum of ten hundred and eighty-eight *dollars* and twenty-five cents, the damages aforesaid, by the jurors aforesaid, in form aforesaid assessed; and the sum of dollars and cents, for their costs and charges by them about their suit in this behalf laid out and expended; and the said defendants in mercy, &c.

Memorandum.—Before the jurors aforesaid retired from the bar of the court here, the said defendants, by their attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Defendants' 1st Exception.

Defendants' 1st Bill of Exceptions.

LENOX'S EX'RS
vs.
GORMAN, et al.

In the trial of this cause, the plaintiffs, by their counsel, offered in evidence to the jury the record and minutes of proceeding in the

case of Gorman *vs.* Lenox's executors, at March term, 1837, and claimed the verdict of this jury for the amount of the rent in arrear found by the jury in that case; (the said record and proceedings copied in page .)

And the defendants then offered to prove the set-off filed in this cause, (copied in page ,) for the purpose of showing that no rent in arrear was actually due, as found by said verdict, from Mrs. Arguellis, as charged in the said avowry, and that therefore the plaintiffs were not damaged to that amount. But the court were of opinion that such evidence, so offered by the defendants, was inadmissible; to which defendants except; and this their bill of exceptions is signed, sealed, and ordered to be enrolled, this 14th January, 1839.

W. CRANCH, (SEAL.)
JAS. S. MORSELL. (SEAL.)

Defendants' 2d Bill of Exceptions.

LENOX'S EX'RS
vs.
GORMAN, et al.

And the defendants further prayed the court that the plaintiffs were not entitled to a verdict from this jury for the amount of the rent in arrear as aforesaid, by the jury in the record aforesaid above given in evidence: which the court refused; and to which the defendants except, and pray the court to sign and seal this 2d bill of exceptions—which is done accordingly, this 14th day of January, 1839.

W. CRANCH, (SEAL.)
JAMES S. MORSELL. (SEAL.)

Proceedings in the case of John B. Gorman against Peter Lenox, referred to in Exceptions, page .

JOHN B. GORMAN
vs.
PETER LENOX.

Be it remembered, that heretofore, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and thirty-two, the said plaintiff, by Richard Wallack, Esquire, his attorney, filed in the circuit court here a certain writing obligatory, commonly called a replevin bond, and which is in manner and form and of the tenor following, to wit:

Replevin Bond.

Know all men by these presents, that we, John B. Gorman, Leonard Storm and William G. Deale, of the county of Washington, in the District of Columbia, are held and firmly bound unto Peter

Lenox, of the county and district aforesaid, in the full and just sum of three thousand four hundred dollars, current money, to be paid to the said Peter Lenox, his certain attorney, executors, administrators or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this seventeenth day of November, in the year of our Lord one thousand eight hundred and thirty-two.

Whereas the above bound John B. Gorman is about to prosecute and sue forth, out of the circuit court of the District of Columbia for the county of Washington, the United States writ of replevin, to be directed to the marshal of the district aforesaid, commanding the said marshal to replevy and deliver to him, the said John B. Gorman, the following goods and chattels, that is to say: one carpet in mess-room, one hair sofa, one mantel glass, one mahogany sideboard, one dozen rush-bottomed chairs, two marble stands, one set of dining-tables, one pair andirons, shovel, tongs and fender, rug, two spit-boxes and brush, seven pictures with gilt frames, three window curtains and cornices, one carpet in setting room, two card tables, one pier glass, two window curtains and cornices, one dozen rush-bottomed chairs, six prints with gilt frames, one fender, shovel and tongs, two spit-boxes, brush and hearth-rug, one carpet, one pair andirons, bed, bedstead and curtains, wash-stand, basin and ewer, looking-glass, table and two chairs, bedstead, bed and curtains and bolster, one bureau, carpet, wash-stand, basin and ewer, one dressing-table and glass, one carpet, two small tables, one candlestick and two chairs, one mahogany bedstead, hair matrass, bed, bolster, two pillows and curtains, two sheets, three blankets and coverlid, one bureau, two dressing-glasses, wash-stand, two bowls, two pitchers, carpet and two chairs, four chairs, carpet, dressing-table and irons, thirteen beds, bedsteads, bolsters and pillows, thirty-nine blankets, twenty-six sheets, thirteen quilts and ten curtains for beds, nine bureaus, nine carpets for bed-rooms, one mantel glass, two mahogany tables, mahogany sideboard, andirons, shovel and tongs, fender and carpet, the proper goods and chattels of the said John B. Gorman, which the above named Peter Lenox hath taken and unjustly detains, as it is said, against sureties and pledges, and so forth; which said writ is to be returnable to the said circuit court, to be held at the city of Washington, on the fourth Monday of November instant.

Now, the condition of the above obligation is such, that if the said John B. Gorman do and shall well and truly prosecute with effect the said writ of replevin against the said Peter Lenox for the taking the said goods and chattels, and shall well and truly return and re-deliver the said goods and chattels to the said Peter Lenox, if a return thereof shall be adjudged by the said court, and shall pay and satisfy unto the said Peter Lenox, his executors, administrators or assigns, all such damages, costs and charges, as shall be adjudged by the said court, or which shall be sustained by occasion of replevying the goods and chattels aforesaid, and shall in all things well and truly

observe and perform the judgment of the said court in all things of and upon the premises, then the above obligation to be void; otherwise to be and remain in full force and virtue in law.

J. B. GORMAN, (SEAL.)
LEONARD STORM, (SEAL.)
W. G. DEALE. (SEAL.)

Signed, sealed and delivered in the presence of
L. ARGUELLIS.

Thereupon, on the day and year aforesaid, the said plaintiff, by his attorney aforesaid, prosecuted and sued forth, out of the circuit court here, the United States writ of replevin, directed to the marshal of the district aforesaid, in the words and of the tenor following, to wit:

Writ of Replevin.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to the Marshal of the District of Columbia—Greeting:

Whereas John B. Gorman, of the county of Washington, hath come into the circuit court of the District of Columbia, for the county aforesaid, and found sufficient sureties as well his clamour to prosecute as for one carpet in mess-room, one hair sofa, one mantel glass, one mahogany sideboard, one dozen rush-bottomed chairs, two marble stands, one set of dining tables, one pair andirons, shovel, tongs, fender and rug, two spit-boxes and brush, seven pictures with gilt frames, three window curtains and cornices, one carpet in sitting room, two card tables, one pier glass, two window curtains and cornices, one dozen rush-bottomed chairs, six prints with gilt frames, one fender, shovel and tongs, two spit-boxes, brush and hearth-rug, one pair andirons, one carpet, bed, bedstead and curtains, wash-stand, basin and ewer, looking-glass, table and two chairs, bedstead, bed and curtains and bolster, one bureau, carpet, wash-stand, basin and ewer, one dressing-table and glass, one carpet, two small tables, one candle-stand and two chairs, one mahogany bedstead, hair matrass, bed and bolsters, two pillows and curtains, two sheets, three blankets and coverlid, one bureau, two dressing-glasses, wash-stand, two towels, two pitchers, carpet and two chairs, four chairs, carpet, dressing table and irons, thirteen beds, bedsteads, bolsters and pillows, thirty-nine blankets, twenty-six sheets, thirteen quilts and ten curtains for beds, nine bureaus, nine carpets for bed-rooms, one mantel glass, two mahogany tables, mahogany sideboard, shovel, tongs, fender and carpet, the proper goods and chattels of him, the said John B. Gorman, which a certain Peter Lenox, of the county aforesaid, hath taken and unjustly detained, against sureties and pledges, &c. (as it is said) to be returned, if a return thereof shall be adjudged.

Therefore you are hereby commanded, that the said goods and chattels, being in the county aforesaid, in your said district, you cause to be replevined and delivered to the said John B. Gorman, and that you put by sureties and pledges the said Peter Lenox, that he be and appear before the said circuit court to be held in and for the county aforesaid, at the city of Washington, on the fourth Monday of November instant, to answer the said John B. Gorman in a plea wherefore he took the goods and chattels of him, the said John B. Gorman, and them unjustly detains, against gages and pledges, &c. And how you shall execute this writ make known to the said court, at the day and place aforesaid, and have you then and there this writ.

Witness the honorable William Cranch, Esquire, chief judge of the said court, the 2d day of July, 1832.

Issued this 17th day of November, 1832.

W. BRENT, *Clerk.*

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-two, and the day of the return of the aforegoing writ, comes into the circuit court here the said plaintiff, by his attorney aforesaid; and the marshal of the district aforesaid, to whom the said aforegoing writ was, in form aforesaid, directed, makes return thereof to the court here thus endorsed, to wit:

"Replevied and delivered as per schedule and receipt.

H. ASHTON, *Marshal.*"

Rule—Nar and Imparlance to March Term, 1833.

And the said defendant so forewarned, appears in court here, by Joseph H. Bradley, Esquire, his attorney; thereupon, on motion of the said defendant, by his attorney aforesaid, it is ruled by the court here, that the said plaintiff declare against the said defendant in the plea aforesaid, or judgment, by the court here, will be entered against him in default thereof; whereupon the said plaintiff, by his attorney aforesaid, prays leave of the court here to imparle until the fourth Monday of March next, and then to declare against the said defendant in the plea aforesaid; and to him it is granted; the same day is given to the aforesaid defendant also.

Defendant's death suggested, and continued to March Term, 1833.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-three, comes again into the circuit court here the said plaintiff, by his attorney aforesaid; and the said defendant doth not come; and the said plaintiff suggests to the court here, that after the last continuance of the plea aforesaid, and before this day, at the county aforesaid, the said defendant de-

parted this life, and the same is not denied; whereupon, on motion of the said plaintiff, by his attorney aforesaid, leave is given by the court here to the said plaintiff, according to the act of assembly in such case made and provided, to issue summon, returnable to the next term, directed to the executors of the said defendant, to appear and defend the plea aforesaid; whereupon further process of and upon the premises aforesaid is, by order of court here, continued until the fourth Monday of November next; the same day is given to the said plaintiff then and there, and so forth.

Appearance of Executors.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-three, comes again into the circuit court here the said plaintiff, by his attorney aforesaid; and Lucy Ann Lenox, John McClelland, and Lewis H. Machen, executors of the last will and testament of Peter Lenox, deceased, also appear, by Joseph H. Bradley, Esq., their attorney.

Rule—Nar. and Imparlance to March Term, 1834.

Thereupon, on motion of the said defendants, by their attorney aforesaid, it is ruled by the court here, that the said plaintiff declare against the said defendants in the plea aforesaid, or judgment by the court here will be entered against him in default thereof; whereupon the said plaintiff, by his attorney aforesaid, prays leave of the court here to imparle until the fourth Monday of March next, and then to declare against the said defendants in the plea aforesaid; and to him it is granted, and the same day is given to the aforesaid defendants also.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-four, to which said day the said plaintiff had leave to imparle and then to declare against the said defendants in the plea aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendants, by their attorney aforesaid; and the said plaintiff, by his attorney aforesaid, declares against the said defendants in the plea aforesaid, in form following, to wit:

Nar.

District of Columbia, *County of Washington, sct.*

Lucy Ann Lenox, John McClelland and Lewis H. Machen, executors of the last will and testament of Peter Lenox, late of said county, deceased, were summoned to answer John B. Gorman, of a plea wherefore the said Peter Lenox took the goods and chattels of the said John B. Gorman, and unjustly detained them, against sureties and pledges, &c.; and thereupon the said John B., by William

L. Brent, his attorney complains, for that the said Peter Lenox, heretofore, to wit, on the 16th day of November, in the year of our Lord one thousand eight hundred and thirty-two, at the county of Washington aforesaid, took the following goods and chattels of great value, to wit: one carpet in mess-room, one hair sofa, one mantel glass, one mahogany sideboard, one dozen rush-bottomed chairs, two marble stands, one set of dining tables, one pair of andirons, shovel, tongs, and fender, one hearth-rug, two spit-boxes and brush, seven pictures with gilt frames, three window curtains and cornices, one carpet in sitting room, two card tables, one pier glass, two window curtains and cornices, one dozen rush-bottomed chairs, six prints with gilt frames, one fender, shovel and tongs, two spit-boxes, brush and hearth-rug, one carpet, one pair of andirons, bed, bedstead and curtains, one wash-stand, basin and ewer, looking-glass, table and two chairs, bed-stead, bed and curtains, and bolsters, one bureau, carpet, wash-stand, basin and ewer, one dressing-table and glass, one carpet, two small tables, one candle-stand and two chairs, one mahogany bedstead, one hair matrass, bed and bolster, two pillows and curtains, two sheets, three blankets and coverlid, one bureau and two looking-glasses, wash-stand, two bowls, two pitchers, carpet and two chairs, four chairs, carpet, dressing-table and irons, thirteen beds, bedsteads, bolsters and pillows, thirty-nine blankets, twenty-six sheets, thirteen quilts, ten curtains for beds, nine bureaus, nine carpets for bedrooms, one mantel glass, two mahogany tables, one mahogany sideboard, andirons, shovel and tongs, fender and carpet, of the value of eleven hundred and ninety-eight dollars, and unjustly detained the same, against sureties and pledges, until, &c. Wherefore the said John B. saith that he is injured, and hath sustained damage to the value of two thousand dollars: and therefore he brings suit, &c.

W. L. BRENT, *for Pl'ff.*

JOHN DOE,
RICHARD ROE, } Pledges, &c.

And the said plaintiff, by his attorney aforesaid, prays that the said defendants to his declaration aforesaid may answer.

Rule—Plea, and Imparlance to Nov. Term, 1834.

Therefore, it is ruled by the court here, that the said defendants answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be entered against them in default thereof.

And the said defendants, by their attorney aforesaid, defend the force and injury, when, and so forth, and pray leave of the court here to imparle until the fourth Monday of November next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid: and to them it is granted; and the same day is given to the said plaintiff also.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-four, to which said day

the said defendants had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, come again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendants, by their attorney aforesaid.

Rule—Plea.

And thereupon, on motion of the said plaintiff, by his attorney aforesaid, it is ruled by the court here that the said defendants answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, or judgment by the court here will be rendered against him in default thereof.

Whereupon the said defendants, by their attorney aforesaid, filed in court here the following avowry, to wit:

Avowry.

The Executors of PETER LENOX *at suit* JOHN B. GORMAN. } Avowry.

And the said Lucinda Lenox, Lewis H. Machen and John McClelland, executors of the last will and testament of Peter Lenox, late of Washington county, deceased, by their attorney, Joseph H. Bradley, come and defend the wrong and injury, when, &c., and well avow the taking of the goods and chattels aforesaid in the said place, &c., and justly, &c., because they say that the said Peter Lenox, whose executors they are, before that time, when, &c., was seized and possessed, in fee simple absolute, of the same place where the taking of the goods aforesaid is supposed to be, and, being so thereof seized, it was agreed between the said avowant and one Elizabeth T. Arguellis, before the said time, when, &c., to wit, on the first day of June, 1827, at the county aforesaid, that the said Elizabeth T. should enter into the said dwelling house, and should possess and occupy the said part, &c., with, &c., in which, &c., for and during the space of one whole year from the said first day of June, 1827, until the first day of June, 1828, fully to be completed and ended, and so from year to year, so long as it should please both parties aforesaid; the said Elizabeth T. rendering and paying therefor, yearly and every year, to the testator of the said avowants, the sum of five hundred and fifty dollars; by virtue whereof, the said Elizabeth T., into the said part, &c., wherein, &c., entered, and the same, from the day and year last aforesaid for five years and three months then next following, had and occupied; and because the sum of nine hundred and seventy-eight dollars and thirty cents of the rent aforesaid, for more than one whole year, ending on the first day of September, 1832, was in arrear and not paid to the said avowants, at the same time, when, &c.: the said avowants well avow the taking of the goods, &c., as the said plaintiff in his said declaration hath averred, at the time, and when, &c., and justly, &c., and for the said

sum of $978 36, to the said avowants in form aforesaid being in arrear, as in the said dwelling-house, &c., which to the distress of the said avowants, in form aforesaid, was charged and bound; and this they are ready to verify. Whereupon they pray judgment, and a return of the goods and chattels, &c., aforesaid, to be adjudged to them, &c.

BRADLEY, *for Def'ts.*

2d Avowry.

2d Avowry.

That the demise is the same as laid in first avowry, with the exception of the time of payment of rent, which is here avowed to be payable quarterly.

Pleas in bar to Avowry.

Pleas in bar to Avowry.

1st Plea—Non-termit.

And the said John B. Gorman, as to the said avowry of the said defendants, saith that the said defendants, by reason of any thing by them in that avowry alleged, ought not to avow the taking of the said goods and chattels in the said place, in which and so forth; and justly, because he saith, that the said Elizabeth Arguellis, in said avowry named, did not hold or enjoy the said dwelling-house, (in which and so forth,) with the appurtenances, as tenant thereof to to the said Peter Lenox, under the said supposed demise thereof, in the said avowry mentioned, in manner and form as the said defendants have above, in said avowry, in that behalf alleged; and this he, the said plaintiff, prays may be enquired of by the country.

2d Plea—Non-demisit.

2d. And for a further plea, as to the avowry aforesaid of the said defendants, the said plaintiff, by leave of the court here first had and obtained according to the form of the statute in such case made and provided, comes and saith, that the said defendants, by reason of their said avowry or any thing contained therein, ought not to avow the taking of the goods and chattels aforesaid in the place (and which, &c.) to be just, because he saith, that the said Peter Lenox did not demise the said dwelling-house (in which, &c.) to the said Elizabeth Arguellis, in manner and form as they, the said defendants, in their said avowry have alleged; and this the said plaintiff prays may be enquired of by the country, &c.

3d Plea—No Rent in Arrear.

3d. And for a further plea to said avowry of said defendants, the said plaintiff, by leave of the court here first had and obtained according to the form of the statute in such case made and provided, saith, that the said defendants ought not to avow the taking of the said goods and chattels in the place (and which, &c.) to be just, because he saith, that no part of the supposed rent in the said avowry mentioned, was, or is in arrear from the said Elizabeth T. Arguellis to the said Peter Lenox, in his life time, in manner and form as the said defendants in said avowry allege; and this he prays may be enquired of by the country.

J. HELLEN & J. DUNLOP, *for Pltff.*

Venire facias to March Term, 1835.

Therefore, let a jury thereon appear before the court here on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., and the same day is given to the parties aforesaid, then and there, &c.

Appearance, and continuance to November Term, 1835.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-five, come again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorney aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attornies aforesaid, and by order of the court here thereon, is continued until the fourth Monday of November next.

Appearance, and continuance to March Term, 1836.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-five, come again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attorneys aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attornies aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of March next.

Appearance, and continuance to November Term, 1836.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-six, come again into the cir-

cuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attornies aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attornies aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of November next.

Appearance, and continuance to March Term, 1837.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-six, come again into the circuit court here, as well the said plaintiff by his attorney aforesaid, as the said defendants by their attornies aforesaid; thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the said court thereon, is further continued until the fourth Monday of March next.

Appearance.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-seven, come again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendants by their attorneys aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here, by consent of the said parties, by their attorneys aforesaid, that twelve persons from the panel of petit jurors, returned to the court here by the marshal of the district aforesaid, be drawn by ballot, according to the act of assembly in such case made and provided; and thereupon, the twelve persons, being so drawn by ballot and called, come, to wit:

Jury.

1. Charles Butler,
2. William N. Waters,
3. Joseph S. Clarke,
4. Alex'r Borland,
5. William Easby,
6. Benj'n Burns,
7. John G. Robinson,
8. Roswell Woodward,
9. Henry T. Weightman,
10. William B. Kibby,
11. James Williams,
12. Zach. Walker.

Who, being empaneled and sworn to say the truth in the premises, upon their oath do say:

Verdict for Defendants on Avowry—Damages.

That the said defendants, on the within mentioned day of in the declaration of the said plaintiff within specified, did not, of his own wrong, but for such cause by them, the said defendants, in their avowry within written alleged, in the within mentioned

place in which, &c., take the said goods and chattels within contained of him, the said plaintiff, in the declaration of him, the said plaintiff, within specified, and them detain until, &c., as he lawfully might, as the said defendants have within, by pleading, alleged; and they assess the damages of them, the said defendants, by occasion thereof, to the sum of one cent, and find the rent in arrear to be nine hundred and seventy-eight dollars and thirty cents, and the value of the property destrained to be eleven hundred and ninety-eight dollars.

Judgment on Verdict for Defendants.

Thereupon it is considered by the court here, that the said defendant recover of the said plaintiff the sum of one cent for their damages which they have sustained by reason of the premises, as also the sum of sixteen dollars and thirty-five cents for their costs and charges by them, about their defence in this behalf, expended, and that they, the said defendants, have execution thereof.

Test: W. BRENT, *Clerk.*

Set-off referred to in Exceptions.

Dr. *Estate of Peter Lenox, dec'd, in acc't with John B. Gorman,* Cr.

1828.		
Jan'y 22	To cash paid as per acc't, - - -	$155 00
July 26	painting house formerly occupied by Mrs. Myers, - - - -	175 00
	painting 5 doors, - - - -	7 50
	do. do. at Mrs. Blakes, -	50 00
	allowed Ig. Mudd for putting up closets,	70 00
	paid Van Coble for cutting 4 doors, -	56 00
1829.		
Aug't 28	astrol lamp, and order on Wm. Prentiss, $30, - - - -	45 00
Sept. 11	cash paid on acc't of rent, - -	27 00
Dec'r "	Warren R. Davis' note $125—Sevier's $100, - - - -	225 00
1830.		
Feb'y 11	cash paid on acc't of rent - -	30 00
Mar. 19	do do do No. 1,	137 50
June 1	do do do " 2,	137 50
" 2	do Clement's note, - -	65 00
Sept. 13	do as per acc't up to Sept. 1, " 5,	137 50
Oct'r 16	do on acc't of rent, " 4,	70 00
Nov. 10	do do do " 3,	138 98
Dec. 11	do do do " 6,	111 16
1831.		
Jan'y 8	do do do - -	100 00
		$1,738 14

314.

1831.		
	Amout brought forward, - - -	$1,738 14
Feb'y 28	To cash paid up to Mch. 1, 1831, - -	275 00
April 18	do on acc't of rent, - -	100 00
Dec. 15	do do do - -	137 50
	painting inside of house and sky-light, -	86 00
	Van Coble for 1 pair cellar doors, -	6 00
	water-coloring 15 rooms, - -	45 00
	papering back parlor, - -	30 00
	set of books (biography) - -	25 00
	package of tickets, with Thos. Lloyd, in the New York Lottery, - -	70 00
	4 boxes tea, 7 50; 1 keg mackerel, 1 75,	9 25
1832.		
Mch. 30	cash paid house rent, No. 8,	151 00
April 18	do do " 7,	100 00
" "	bbl. of apples, - - - -	3 00
Oct. 26	cash paid rent as per acc't, " 9,	137 50
	Knowlton & Co. acceptance, - -	193 00
	one patent pen-cutter, - - -	6 00
	cash paid note to S. Masi for rent to P. L., 15 August, 1831, - - -	110 00
	clothes for son, - - -	6 00
	stable removed by P. L. to be allowed, -	46 00
	partition in garret, - - -	16 00
	do in lower room, - -	12 00
	attiring fire-places, - - -	19 00
	China closet in back parlor, - -	26 00
	painting house inside, - - -	60 00
	do front door and casing, -	2 75
	paid for taking out water from cellar-kitchen, - - - -	30 00
	yellow-washing rooms, - -	25 00
	paid Burr on acc't of rent, - -	187 00
	filling up lot on 8th street, - -	48 00
	house sold by P. Lenox to R. Charlton,	60 00
		$3,760 14

Test: W. BRENT, *Clerk.*

Return to Writ of Error.

And whereas afterwards, to wit, on the twenty-first day of January, in the year of our Lord one thousand eight hundred and thirty-nine, the said defendants, by their attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit